

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of

Rules and Regulations Implementing the  
Telephone Consumer Protection Act of 1991

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CG Docket No. 02-278  
CC Docket No. 92-90

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**COMMENTS OF REED ELSEVIER INC.**

**I. Background and Introduction**

Reed Elsevier Inc. ("Reed Elsevier") is pleased to submit these comments in response to the Federal Communication Commission's Notice of Proposed Rulemaking and Memorandum Opinion and Order addressing the Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, 67 Fed. Reg. 62,667 (proposed October 8, 2002) (to be codified at 47 C.F.R. pt. 64). Reed Elsevier is one of the world's leading publishing and information companies, employing more than 22,000 people in the United States. Reed Elsevier provides critical information in both hard copy and electronic formats to the government, scientific, legal, educational, and business communities.

Within these identified market segments, Reed Elsevier offers a wide array of information-driven services and solutions to businesses. Reed Elsevier businesses and services include:

- Reed Business Information ("RBI"), a leading provider of critical information and marketing solutions to business professionals in industry sectors, including media, electronics, manufacturing, and building and construction. RBI's market-leading properties include more than 135 business-to-business publications, more than 125

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Web sites, and a broad range of services, including Web development, custom publishing, research, maintaining business lists, and hosting industry events.

- Reed Exhibitions, the world's leading organizer of trade and consumer events with more than 470 events in 29 countries.
- Harcourt Education, a preeminent publisher for school pupils all over the world, and also for educators of all kinds, as well as for specific professional and academic communities.
- The Psychological Corporation, the largest commercial publisher of psychological assessments in the world, including assessments of human behavior, attitudes, and intelligence Its division, Harcourt Educational Measurement, serves the educational testing needs of millions of elementary and secondary students through its catalog products, including the *Stanford Achievement Test* product line, and its custom statewide assessments.
- LexisNexis, a leading electronic information provider to law offices, corporate legal departments, and governmental agencies.
- Elsevier Science, a leading publisher and disseminator of literature covering a broad spectrum of scientific endeavors, including such fields as medicine, computer, life and environmental sciences, and mathematics.
- Martindale-Hubbell, which publishes the leading directory of legal professionals
- Matthew Bender & Company, Inc., a renowned publisher of books and CD-ROMs containing primary and secondary materials used by the legal market.

In Reed Elsevier's experience, its business, professional, and government customers respond favorably to all types of marketing, including telemarketing and fax marketing when performed responsibly.<sup>1</sup> Reed Elsevier submits these comments to focus the Commission's attention on two items of particular concern to its operations. Specifically, Reed Elsevier, on behalf of its various business units, wishes to comment on the Commission's request to address the treatment under the TCPA of sending fax solicitations where an established

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<sup>1</sup> The telemarketing activities of Reed Elsevier's divisions occur within the business-to-business context and, thus, fall outside of the Commission's telemarketing rules applying to calls to residences.

business relationship exists. Reed Elsevier believes that the current framework that permits the faxing of advertisements to entities with which it has an established business relationship should be preserved. Reed Elsevier respectfully requests that the Commission expressly clarify in its rule that sending of a fax by a company to an individual/business that directly provides its fax number to that company constitutes “consent” under the TCPA. Finally, Reed Elsevier believes that the Commission’s current framework governing fax broadcasters, with ultimate liability for compliance resting with the entity on whose behalf facsimiles are transmitted, also should be maintained.

**11. The Commission Should Preserve its Current Approach that **Allows Businesses to Engage in Telemarketing to Entities Where an Established Business Relationship Exists and Should Expressly Set This Principle Forth in its Rule****

The Commission should preserve its approach that allows businesses to send fax advertisements where an established business relationship exists. Reed Elsevier’s various business units communicate via facsimile to entities with which it has an established business relationship. Consistent with the TCPA’s requirements, Reed Elsevier divisions maintain no-fax lists and honor the desires of businesses that indicate their desire not to receive fax solicitations. Faxes are an effective form of communication with business customers. In the experience of the divisions of Reed Elsevier, there is a very favorable response to its contacts via fax with individuals where an established relationship exists. This fact is evident in the significant response rates and dollar amounts spent on subsequent purchases by existing customers. The current approach should be preserved because it strikes the appropriate balance of allowing for communication where a relationship exists while preserving the choice not to receive further fax communications

The Commission asks “whether there is a need to clarify what constitutes a person’s prior express invitation or permission for purposes of sending an unsolicited fax.”<sup>2</sup> The Commission should clarify that a request for information about a product or to preview a product constitutes “consent” sufficient to transmit fax advertisement as permitted under the TCPA. Many sales of Reed Elsevier products occur through such “leads” where individuals acting in their business capacity provide their fax numbers to a division of Reed Elsevier. The experience of Reed Elsevier indicates that when individuals or businesses request information about our products, they expect and, in fact, desire to receive material and contacts regarding such products. If the individual or business does *not* wish to receive further fax solicitations from an entity from which it has at some point requested information, the individual can simply express such request directly to the company, and the request would be honored.

Additionally, Reed Elsevier requests that the Commission expressly set forth in its Rule that when an established business relationship exists, such relationship constitutes “consent” under the TCPA, thus permitting the transmission of fax advertisements. Various companies have been the subject of lawsuits for the sending of faxes where an established business relationship exists. Some of these suits contend that there does not exist an “established business relationship” exemption in the TCPA that applies to fax communications. These suits argue that, under the statute, any exceptions defined by the Commission apply only in the context of telemarketing, a conclusion with which we disagree.’ However, as a result of this interpretation

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*See* NPRM at ¶ 39.

*See* 47 U.S.C. § 227(b)(2)(B)

by plaintiffs' lawyers, companies are faced with defending against numerous lawsuits for fax communications with their own customers. We believe that the FCC should clarify this point.

The Commission also should clarify in the rule that when a business directly submits its fax number to another business that the provision of the fax number constitutes "consent" that the number will be used by that company. There is a significant distinction in this situation, where the fax number is obtained directly from the individual, from the situation where a fax number is obtained from an unrelated business. There is no question that, under the statute, fax advertisements can be sent with "consent." The Commission has reached the conclusion in the text of its Order—that a fax transmission should be deemed to be invited by the recipient where a relationship exists, particularly in the business-to-business context.<sup>4</sup>

### **III. Liability for the Sending of Faxes is Best Placed on the Entity on Whose Behalf a Fax is Transmitted**

The Commission seeks comment on whether it should specifically address in its rules the activities of fax broadcasters. The Commission cites as its reason to seek comment on whether to reevaluate its current treatment of fax broadcasters as the "apparent prevalence of fax broadcasters that determine the destination of their clients' advertisements." Under the Commission's current treatment of fax broadcasters, "the entity or entities on whose behalf

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**TCPA** Order at n.87, *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 10 FCC Rcd 12391, ¶ 37 (1995).

NPRM at ¶ 40.

facsimiles are transmitted are ultimately liable for compliance with the rule banning unsolicited facsimile advertisements, and that fax broadcasters are not liable for compliance with the rule.”<sup>6</sup>

The Commission should maintain its current treatment of placing liability for compliance with the rule upon the entity on whose behalf the fax is transmitted. An established business relationship must exist for businesses to legally transmit fax solicitations. Fax broadcasters are not in a position to know firsthand whether an established business relationship exists. Fax broadcasters are instead performing a service on behalf of the company that has the established business relationships.

For this reason, the entity on whose behalf the fax is sent, which alone possesses knowledge of the relationship, should remain the party that is liable under the TCPA. Given the Commission’s current requirement that a fax advertisement identify the entity on whose behalf the message is sent, there can be little question as to the entity that possesses the established business relationship for TCPA purposes. To the extent that complaints and inquiries are received by the Commission, the Commission has sufficient enforcement authority under its current rule to address these concerns.

#### **IV. Conclusion**

For the reasons stated above, the Commission should preserve its established business relationship exemption for the sending of faxes and expressly state in its Rule that such communications are lawful. In instances in which businesses or individuals wish to not receive further fax advertisements when an established business relationship exists, the appropriate way

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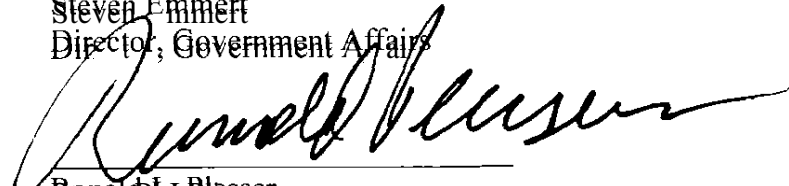
*Id.*

to effectuate such desire is by directly contacting the business and asking not to receive further  
faxes. Finally, the Commission should maintain its treatment of fax broadcasters by continuing  
to place liability on the entity on whose behalf faxes are transmitted and not the fax broadcaster.

Respectfully submitted,

REED ELSEVIER INC.

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